

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-02-0418 GEB GGH P

vs.

FERNANDO LOPEZ-CUEVAS,

ORDER

Movant.

_____/

Movant is a federal prisoner proceeding pro se with a motion to vacate, correct or set aside his sentence pursuant to 28 U.S.C. § 2255. Movant filed his § 2255 motion on October 13, 2009. Respondent filed an opposition on April 16, 2010. On May 3, 2010, movant filed a request for an extension to file a reply. On May 14, 2010, the undersigned granted movant a 30 day extension to file a reply. Movant did not file a reply or otherwise communicate with the court until approximately 16 months later. On October 3, 2011, movant filed a traverse and a motion for to leave to file the traverse. Movant states that it took so long to file a traverse because he is indigent, cannot speak or write English and no other inmates were able to help him until recently. Movant's motion is denied and the traverse is stricken. Movant was provided an extension in May 2010, but did not file a traverse or otherwise communicate his difficulties to the court for 16 months. While great latitude is provided for pro se litigants, movant seeking

1 good cause to excuse 16 months of silence and to file a traverse 16 months late is well beyond
2 acceptable—even for a person who alleges that he cannot speak or write English.

3 During trial, on February 11, 2004, a in camera hearing was held out of the
4 presence of the jury and the prosecution, between the trial court, movant and movant's attorney
5 as movant requested counsel be relieved and new counsel appointed. This hearing was not
6 transcribed and does not appear in the trial transcript. However, the hearing contains information
7 relevant to the instant § 2255 motion which contains 24 claims of ineffective assistance of
8 counsel.

9 Therefore, Court Reporter Kimberly Bennett shall prepare a transcript of this
10 hearing and send a copy of the transcript to movant and respondent.¹ Once the transcript is
11 prepared, Court Reporter Bennett shall forward it to the Office of the Clerk for filing under seal.
12 No briefing is required in response to the transcript and the court will not review any briefing if
13 submitted.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Movant's motion to file a traverse (Doc. 206) is denied and the traverse (Doc.
16 207) is stricken;

17 2. Court Reporter Kimberly Bennett shall prepare a transcript of the February 11,
18 2004, in camera hearing and serve a copy of the transcript on movant and respondent. Once the
19 transcript is prepared, Court Reporter Bennett shall forward it to the Office of the Clerk for filing
20 under seal. No briefing is required in response to the transcript and the court will not review any
21 briefing if submitted.

22 DATED: October 6, 2011

23 /s/ Gregory G. Hollows
24 UNITED STATES MAGISTRATE JUDGE

GGH: AB - lope0418.ord

25 ¹ Attorney-client privilege has already been waived in this case (Doc. 186). Although the
26 hearing seemingly contains no prejudicial information with respect to counsel, the undersigned
will keep it sealed as persons with different perspective might disagree.